

DATE: April 9, 1998

SUBJECT: PANEL CONFERENCE -- AUTHORIZING ASSIGNMENT

1. After a case has been argued, the merits panel will hold at least one conference and will at that conference exchange tentative views and votes. The judges announce a “straw” vote, in reverse order of seniority, on the decision in each case and on whether to employ a precedential opinion, a nonprecedential opinion, or a judgment of affirmance without opinion under Rule 36.

2. The presiding judge assigns the authoring responsibility for each case at the end of each day’s sitting or at the end of a session. If the panel is divided, the authoring role is assigned to a member of the majority. If the presiding judge dissents, assignment will be made by the senior member of the majority.

3. Panel members desiring to exchange authoring assignments shall refer the matter to the presiding judge for decision. The presiding judge will notify the chief judge of any change.

4. A merits panel may follow these procedures for cases submitted on the briefs. Alternatively, the panel may conclude that the case is appropriate for a Rule 36 judgment or the presiding judge may preassign the authoring responsibility to a panel member before the panel conference. Under the alternative procedure, a Rule 36 judgment or an opinion may be voted on before the panel conference and may be ready to be issued promptly following the panel conference.